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## THE HISTORICAL ROLE OF THE AMERICAN BAR ASSOCIATION IN JUDICIAL ADMINISTRATION

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While the term “judicial administration” has been used extensively in the literature on judicial systems, it has not been defined or given a precise meaning.<sup>1</sup> For purposes of this paper, the following definition will be used: Judicial administration consists of a general overview of the judicial system in civil cases, and includes the underlying assumptions and objectives of the system; the methods and techniques employed; the organizational structure; the personnel involved; the results achieved and the improvements that may be made.

The words “general overview” should be noted. This excludes technical rules of practice and procedure, rules of evidence, etc., which govern litigation and with which lawyers and judges must be familiar. Similarly, the details of how particular courts are or may be organized are not covered. These subjects belong to the traditional sources of legal literature designed for judges and the practicing bar.

Criminal cases have not been included in this definition.<sup>2</sup> They have their own special objectives, procedures and constitutional requirements and are preferably left to be considered on their own terms. Similar considerations apply to special fields such as juvenile courts, bankruptcy, insolvency proceedings, admiralty, and others.

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1. The term does not appear in BOUVIER'S LAW DICTIONARY; BLACK'S LAW DICTIONARY; WORDS AND PHRASES; CORPUS JURIS SECUNDUM; or AMERICAN JURISPRUDENCE 2D.

The most thorough discussion of the difficulties encountered in defining the term appears in R. WHEELER & H. WHITCOMB, JUDICIAL ADMINISTRATION: TEXT AND READINGS 7-20 (1977). Their own definition leaves much to be desired: “The direction of and influences on the activities of those who are expected to contribute to just and efficient case processing—except legal doctrinal considerations, insofar as they dispose of the particular factual and legal claims presented in a case.” *Id.* at 8.

2. Criminal cases were not included by William Howard Taft, Roscoe Pound and Arthur T. Vanderbilt in their discussions of judicial administration.

This essay will examine the history of the activities of the American Bar Association in the field of judicial administration as so defined. It is recognized that other organizations have also been active in this area. For example, the American Judicature Society and its journal have been an indispensable source of information on the developments in judicial administration. The Institute of Judicial Administration, located at New York University, is an organization devoted exclusively to the subject. However, the American Bar Association has been the dominant institution in the field.

In examining the work of the American Bar Association, it became evident that it was necessary to narrow still further the scope of this essay. As the definition above illustrates, the subject of judicial administration covers a wide area. More than one section, committee, division, etc. of the Association may deal with one or more aspects of judicial administration. For example, the Association has had a Committee on Selection, Tenure and Compensation of Judges; a Committee on Uniform Judicial Procedure; and a Section on Legal Education and Admission to the Bar. The subject matter of such agencies, of course, falls within the term, judicial administration. The Association also has had from its beginning an agency, frequently under different names, to which it assigned the principal responsibility for dealing with the broad aspects of judicial administration. It is the history of this agency which this paper will examine, a history recorded principally in the annual reports of the Association.<sup>3</sup>

With the purposes of the paper so defined and limited, the history of the Association's activities may be divided into the following eras: (1) the years preceding Roscoe Pound's 1906 address to the Association; (2) the Pound address and its reception; (3) the Arthur T. Vanderbilt era ending approximately at 1970; and (4) the standards and guidelines era from that date to the present.

### PRE-ROSCOE POUND ADDRESS

The American Bar Association was organized in 1878. The prime mover was Simeon E. Baldwin, a Connecticut lawyer, who brought together at Saratoga Springs, New York, lawyers

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3. The annual reports were not published after 1985.

from various parts of the country to form the Association.<sup>4</sup> In preparing for the meeting, Mr. Baldwin had drafted a constitution which was adopted at the organizing meeting.<sup>5</sup> The constitution provided for a Committee on Judicial Administration and Remedial Procedure. What its duties were to be was not stated.<sup>6</sup> The committee that was appointed by the newly elected president appears to have taken the position from the beginning that it should consider only those matters referred to it by the Association. It would not initiate measures of its own.<sup>7</sup> Hence, its reports dealt with a variety of disparate matters of varying importance. It was asked to secure legislation requiring the clerk of the United States Supreme Court to provide lawyers appearing before it with the court's docket;<sup>8</sup> that it ascertain whether Congress could confer bankruptcy jurisdiction on state courts;<sup>9</sup> and that it study the subject of perpetuation of testimony.<sup>10</sup>

It was asked to study the judicial systems of the various states with a view to ultimate uniformity. The concern was that federal judges, under the then existing law, were required to become familiar with and apply the local law of each state in which they were trying federal cases.<sup>11</sup>

The Committee examined into the wisdom of requiring una-

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4. A full account of how the Association was organized is given in Baldwin, *The Founding of the American Bar Association*, 4 A.B.A. J. 658 (1917).

5. "Mr. Baldwin had prepared, during his previous summer vacation in the Adirondacks, a draft of a Constitution for submission to the Saratoga Conference, and it was this which was reported by the committee, with hardly any change . . ." *Id.* at 693.

6. This is the first use of the term "judicial administration" that has been found, but it cannot be assumed that Mr. Baldwin invented the term or that it was not one familiar to the lawyers at the meeting.

7. This was consistent with the position of the first president of the Association who appointed the committee and is reported to have stated that "the purpose of the Association was a noble one, and he believed that it should seek to avoid becoming an agitator of the law, and rather aim to codify and harmonize, than to revolutionize or reform the law." Baldwin, *supra* note 4, at 694.

8. *Proceedings of the Second Annual Meeting of the American Bar Association*, 2 A.B.A. REP. 5, 17 (1879).

9. *Proceedings of the Third Annual Meeting of the American Bar Association*, 3 A.B.A. REP. 5, 29 (1880).

10. *Proceedings of the Fourth Annual Meeting of the American Bar Association*, 4 A.B.A. REP. 5, 32-33 (1881).

11. *Transactions of the Sixth Annual Meeting of the American Bar Association*, 6 A.B.A. REP. 5, 41-42 (1883); *Report of the Committee on Judicial Administration and Remedial Procedure on Uniformity of Pleading and Practice in United States Courts*, 10 A.B.A. REP. 327 (1887).

nimity in jury verdicts,<sup>12</sup> the advisability of abolishing appellate review in criminal cases as Justice Brewer of the United States Supreme Court had suggested,<sup>13</sup> and the wisdom of permitting appeals from interlocutory orders.<sup>14</sup>

Beginning about 1898, and continuing until 1906, the Committee reported regularly that nothing had been referred to it and, hence, it had nothing to report. The membership of the Association evidently was content with the status quo and sought no changes.<sup>15</sup>

### THE POUND ADDRESS

It was in this climate that in 1906, at St. Paul, Minnesota, Roscoe Pound, then a young Nebraska lawyer, delivered an address before the American Bar Association assembly entitled, "The Causes of Popular Dissatisfaction with the Administration of Justice."<sup>16</sup> It was a striking address both in its jurisprudential dimensions and its specific biting criticisms of the then current administration of justice.<sup>17</sup> He noted the limitations inherent in any judicial system, such as the mechanical operations of legal rules, the lag between public opinion and its implementation through law, and public impatience with legal restraints. He then turned to the causes of dissatisfaction in the Anglo-American legal system. He listed and amplified on the individualistic spirit of the common law in a collectivist

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12. *Transactions of the Fourteenth Annual Meeting of the American Bar Association*, 14 A.B.A. REP. 5, 31-48 (1891).

13. *Report of Committee on Judicial Administration and Remedial Procedure*, 19 A.B.A. REP. 367 (1896). The Committee rejected the suggestion.

14. *Report of the Committee on Judicial Administration and Remedial Procedure*, 20 A.B.A. REP. 347, 347-48 (1897).

15. The Association was more active in other areas. For example, through its Section of Legal Education and Admission to the Bar, the Association from the beginning played a leading role in inducing states to increase their requirements for admission to the bar.

16. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395 (1906).

17. There had been earlier rumblings that all was not well within the judicial system. See, e.g., *Transactions of the Fourteenth Annual Meeting of the American Bar Association*, 14 A.B.A. REP. 5, 31-48 (1891) (controversy regarding jury unanimity); Wilson, *Legal Education of Undergraduates*, 17 A.B.A. REP. 439 (1894) (Woodrow Wilson stated, "It must be granted, . . . lawyers [have] acted as very stubborn and very stupid obstructionists, and having refused to take any part in necessary, nay inevitable, changes in the law . . ."); Taft, *Recent Criticism of the Federal Judiciary*, 18 A.B.A. REP. 237 (1895) (William Howard Taft, then a federal district judge, refers to criticism that the new federal courts favor corporations as against labor).

age, a contentious procedure which turns litigation into a game, political jealousy of the supremacy of law, absence of a legal philosophy, and defects of form resulting from the bulk of law coming from case law. He was critical of our *contentious procedure* which "leads the most conscientious judge to feel that he is merely to decide the contest, as counsel present it, according to the rules of the game, not to search independently for truth and justice."<sup>18</sup> According to Pound, lawyers seek to get error into the record on technical procedural points on which to get reversals, rather than seeking a determination on the merits.

Turning to court organization and procedure, he termed them "the most efficient cause of dissatisfaction," with the multiplicity of courts with fixed jurisdictional lines across which cases and judges cannot be assigned.<sup>19</sup> He referred to the inability of courts by rule to prescribe the procedures for the conduct of litigation. He pointed to the modern English unified court organization under the 1873 Act as an example to be followed.

The address met with considerable criticism from members of the Association. Nevertheless, the Association referred the subject matter of the address to the Committee on Judicial Administration and Remedial Procedure.

The Committee's subsequent report praised Pound's address and stated that the Association could not devote its "efforts to a nobler purpose." However, it construed the Association's referral of the address to the Committee as "simply a preface and preparation for the broader and more thorough consideration of its subject-matter by the Association." It therefore suggested the appointment of a committee of ten to fifteen members to deal with the subject.<sup>20</sup> Considering the inactivity of the Committee during the preceding years, and its implicit conservative stance, its subtle decline to undertake the task is an understandable one.

The Association followed the recommendation of the Committee and appointed a fifteen member committee entitled,

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18. Pound, *supra* note 16, at 405.

19. *Id.* at 408.

20. *Report of the Committee on Judicial Administration and Remedial Procedure*, 31 A.B.A. REP. 505, 512 (1907). The report was received and adopted by the Assembly of the Association. *Id.* at 52.

Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation, which became known as "The Committee of 15."<sup>21</sup>

In its first report,<sup>22</sup> the Committee recommended two major bills for adoption by Congress. One provided that no judgment should be set aside or a new trial granted for procedural errors unless on examination of the whole case there had been a "miscarriage of justice."<sup>23</sup> The other major proposed bill would permit the trial judge to submit issues of fact to the jury reserving questions of law for later argument and decision.

These bills were designed to implement one of the major criticisms that Pound had made in his address, that trial decisions were being overturned on technical procedural points without regard to the merits of the case. The Association's Assembly adopted the recommendation of the Committee with respect to the two bills, but not without very considerable opposition from the floor.<sup>24</sup>

In addition to recommending these bills, the 1909 report of the Committee of 15 presented a number of general principles that were to guide judicial reform.<sup>25</sup> They appear to have been intended to amplify and implement the reforms which Pound

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21. The committee will be so designated in this paper. Pound was a member of the Committee.

22. *Report of the Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation*, 33 A.B.A. REP. 542 (1908).

23. Other proposed bills required, in criminal appeals to the United States Supreme Court, that a justice of the court first certify that the defendant had been "unjustly convicted" or "unjustly deprived of his liberty." Similar certification was required of a federal circuit court judge on appeals to that court. *Id.* at 550-52.

24. The bills met even greater resistance in Congress. It was not until 1919 that the bill providing that a judgment should not be set aside for procedural errors alone, was enacted and then only after substituting "affect the substantial rights of the parties" for "miscarriage of justice." *Transactions of the Forty Second Annual Meeting of the American Bar Association*, 44 A.B.A. REP. 19, 63 (1919). The committee first opposed the substitution. See *Summary of Ninth Annual Report of the Special Committee to Suggest Remedies and Propose Laws Regulating Procedure*, 41 A.B.A. REP. 540 (1916). The next year the Committee of 15 agreed to the change. *Summary of Report of the Standing Committee to Suggest Remedies and Propose Law Relating to Procedure*, 42 A.B.A. REP. 334 (1917).

In 1916, the Committee on Judicial Administration and Remedial Procedure, which had remained largely inactive, was abolished and the Committee of 15 was made a standing committee and renamed "Committee to Suggest Remedies & Propose Laws Regulating Procedure." See *Report of the Executive Committee*, 41 A.B.A. REP. 90, 93 (1916).

25. See *Report of the Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation*, 34 A.B.A. REP. 578, 588 (1909).

had suggested were needed in his 1906 address and were probably the product of Pound's influence as a member of the committee. These principles were further developed in the Committee's 1910 report, but in this case appear under the signature of Pound alone.<sup>26</sup> These principles appear not to have been given serious consideration by the Association and no implementation of them was undertaken until the Arthur T. Vanderbilt era. In the meantime, the Committee of 15 sponsored a variety of measures of limited scope and addressed more to details of procedure. The broader aspects of judicial administration and the possible need for more substantial reforms do not appear in its reports to have been considered. Then United States President William Howard Taft, himself long an advocate of a simplified procedure and reduced cost and delay in litigation,<sup>27</sup> probably stated the more conservative tenor of the times when he said: "There are reforms for objects that never will be seen on land or sea until the millennium. Then there are reforms that are in the direction of practical progress, and that is what law reform is."<sup>28</sup>

In 1919, the newly adopted constitution of the Association included a Committee on Jurisprudence and Law Reform which combined the existing committee of the same name with the Committee of 15.<sup>29</sup> Taft served as chairman of this Committee from 1924 to 1928. In its 1927 report,<sup>30</sup> the Committee

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26. *Report of the Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation*, 35 A.B.A. REP. 614, 635 (1910). See also Pound, *Some Principles of Procedural Reform*, 4 ILL. L. REV. 388 (1909) (part I); Pound, *Some Principles of Procedural Reform*, 4 ILL. L. REV. 491 (1909) (part II).

27. See Taft, *The Delays of the Law*, 18 YALE L. J. 28 (1908). "The inequality that exists in our present administration of justice, and that sooner or later is certain to rise and trouble us, and to call for popular condemnation and reform, is in the unequal burden which the delays and expenses of litigation under our system impose on the poor litigant." *Id.* at 30-31.

As Chief Justice of the United States Supreme Court, Taft initiated major improvements in the administration of the federal judicial system. See Taft, *Possible and Needed Reforms in the Administration of Civil Justice in the Federal Courts*, 6 JUDICATURE 36 (1922); A. MASON, WILLIAM HOWARD TAFT: CHIEF JUSTICE *passim* (1964).

28. *Transactions of the Thirty-Fourth Annual Meeting of the American Bar Association*, 36 A.B.A. REP. 31, 54 (1911) (address of President Taft).

29. The new committee was headed by the chairman of the former Committee of 15 and contained most of the same members. It was reported as a continuation of that committee. *Report of the Standing Committee on Jurisprudence and Law Reform*, 48 A.B.A. REP. 325 (1923).

30. *Report of the Standing Committee on Jurisprudence and Law Reform*, 52 A.B.A. REP. 293 (1927).



referred with pride to its achievements made during the period of its existence, but what specifically was considered to have been accomplished was not stated, nor does it appear in the reports of the Association. The Committee pointed to Pound's principles contained in the Committee's 1909 report and stated that the earlier opposition to them no longer prevailed and

are now perceived to be sound and conservative. . . .

The most enduring achievement of the Committee has been to make familiar to the profession sound ideas tested by the experience of other English-speaking lands, which nevertheless, were unfamiliar twenty years ago and were assumed to be visionary or radical. That is real progress.<sup>31</sup>

While this was probably an overly optimistic picture, the Association had, in fact, been considerably in advance of Congress when the Association sought enactment of its proposed legislation.

The remainder of the Committee's 1927 report was typically confined to procedural and court matters which, while limited in numbers and modest in scope, nevertheless, had they been adopted, would have contributed to the improvement of the judicial system of the federal courts.<sup>32</sup> Except for a proposal for a federal declaratory judgment act, larger objectives such as those that might implement the Pound principles were not undertaken. Even under the dynamic leadership of Taft, the Committee offered little in terms of judicial administration beyond what the Association had earlier advocated. Thus, the unequal status of the poor in litigation, which Taft had earlier deplored,<sup>33</sup> was not addressed.

The 1928 report of the Committee, the last under the chairmanship of Taft, was similar in its discussion and recommendations but without the review of the Committee's prior activities.<sup>34</sup> When Taft's chairmanship came to an end, the Committee's activities rapidly declined to the point where it

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31. *Id.* at 293-94.

32. For example, enforcement of judgments of courts of other states and of the federal courts, revision of the circuits of the United States Circuit Courts of Appeals, and official stenographers for federal judges. The discussion in support of such measures was thorough and impressive.

33. See *The Delays of the Law*, *supra* note 27, at 30.

34. *Report of the Standing Committee on Jurisprudence and Law Reform*, 53 A.B.A. REP. 419 (1928).

did little more than oppose bills pending in Congress that were considered objectionable. Existing Association objectives were not vigorously, or not at all, pursued and the Committee offered no program and had no direction of its own.<sup>35</sup>

### THE ARTHUR T. VANDERBILT ERA

In 1913, the Association had established the "Section of the Judiciary" to provide a forum within the Association for judges. In 1937, for reasons not given, the name of the Section was changed to Section of Judicial Administration.<sup>36</sup> The result was a change in the character and composition of the Section. Membership was no longer confined to judges and the subject matter now covered the full range of judicial administration.

Mr. Vanderbilt had long been an admirer of Pound and the principles of reform Pound had advocated.<sup>37</sup> When he assumed the office of president of the Association in 1937, he turned his attention to judicial reform, and proceeded to introduce a radical change in the direction the Association was to take. Theretofore, the Committee on Jurisprudence and Law Reform had taken the position that the Association should not undertake to deal with reforms in the judicial systems of the states, contending that the National Conference of Commissioners on Uniform State Laws was better equipped to deal with this subject.<sup>38</sup>

Vanderbilt rejected that view and began a program of judicial reform that was to be developed by the Association for adoption by the states, the scope and significance of which was

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35. These observations are based on an examination of the Committee's reports from 1930 to 1937.

36. When a "veteran member" of the Section asked what the object of the change was, Arthur Vanderbilt replied that "it was to give point and emphasis to the real purpose of the Section." When doubt was expressed about getting "any real work out of the judges," Vanderbilt responded that the doubter should have been at the meeting at which the seven committees had been created. See Vanderbilt, *Section of Judicial Administration Launches Program on Wide Front*, 24 A.B.A. J. 5, 5 (1938).

37. "Pound's address became Vanderbilt's catechism in his early days as a lawyer. He sought and obtained the interest and friendship of Pound." Klein, *A Brief Summary of the Development of the Federal-State Court Systems*, in *THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE* 1, 7 (F. Klein, ed. 6th ed. 1981) (Judicial Administration Division Handbook; published by the ABA).

38. See, e.g., *Report of the Standing Committee on Jurisprudence and Law Reform*, 57 A.B.A. REP. 505, 508 (1932); *Report of the Standing Committee on Jurisprudence and Law Reform*, 62 A.B.A. REP. 689, 699 (1937).

unprecedented in the history of the organization. To accomplish his purpose he turned to the newly labeled Section of Judicial Administration. For its chairman, he appointed Judge John J. Parker, Judge of the Court of Appeals for the Fourth Circuit. Judge Parker was well known as an able and dynamic person with liberal views on the need for improvement in the administration of justice.

Judge Parker, as chairman of the Section, immediately created seven committees, each of which was assigned a given area of judicial administration in which to develop a set of standards. The following year, their respective reports were presented and with little dissent adopted by the House of Delegates of the Association.<sup>39</sup> A list of the committees and some of the recommendations contained in their reports are set out below.<sup>40</sup>

The acceptance of this comprehensive program by the Association with hardly a dissent is remarkable when compared with the cool reception and later disregard of the principles which Pound had presented in 1906, 1908 and 1909.<sup>41</sup> The new attitude of the Association may have been attributable in part to several factors. First, there had been a major change in

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39. See *Report of the Section of Judicial Administration*, 63 A.B.A. REP. 522, 522 (1938).

40. *Judicial Administration*: Oddly, the committee was given the same name as that of the Section. The committee's recommendations covered among other items the authority of courts to promulgate rules of procedure, unified court systems, judicial councils, and court statistics.

*Pretrial Procedure*: Desirable procedures which should be followed were set out.

*Trial Practice*: The committee's recommendations covered such items as the judge's control of the trial, examination of jurors, partial new trials on separable issues, prompt judicial decisions, restraints on preliminary injunctions, and others.

*Selection of Jurors*: Recommended was selection of jurors by a commission appointed by the court.

*Law of Evidence*: The recommendations of the committee covered numerous items, among them the use of testimony of survivors, the admission of deceased persons' testimony, business records, and the opinion rule.

*Appellate Practice*: Numerous requirements were listed as necessary for appeals.

*Administrative Agencies and Tribunals*: In view of the magnitude of the issues involved, the committee deferred making recommendations until further study had been undertaken. It noted also that there existed within the Association a Special Committee on Administrative Law that dealt with the subject.

For a complete account of the committee's recommendations, see *Report of the Section of Judicial Administration*, 63 A.B.A. REP. 522, 523-29 (1938). The recommendations contained in these reports were followed by discussions covering 126 pages. See 63 A.B.A. REP. 530-656 (1938).

41. See *supra* notes 16-35 and accompanying text.

the political climate of the country which led to a more liberal view in all segments of society. Second, the United States Supreme Court adopted the new Federal Rules of Civil Procedure, in which the Association had had but a limited role and which introduced major changes in federal civil litigation, such as the union of law and equity, simplified pleadings, liberal joinder of causes of action and of parties and broad discovery. Finally, there was the rapid increase in the number of administrative agencies, especially on the national level, which was generally regarded by the bar as threatening the traditional and basic values of the judicial system.

Granted the presence of such factors, without the vision, leadership and drive provided by Vanderbilt, the acceptance of and commitment to the new program by the Association would not have been likely. Following the adoption by the Association of the Standards, the Section of Judicial Administration, under the leadership of its chairman, John J. Parker, proceeded to develop a plan of implementation. It created a Special Committee on Improving the Administration of Justice, with Parker as its chairman.<sup>42</sup> Its "first step . . . was the appointment in every state of a committee to provide a channel through which the assistance given by the committee could be rendered."<sup>43</sup> Also enlisted was the Junior Bar Conference<sup>44</sup> to collect information in each state on the extent to which the Standards had been or were being implemented.<sup>45</sup> Regional meetings of the bar were held throughout the country and publicity of the work of the Special Committee through various media was promoted.<sup>46</sup> At the request of the Special Committee, monographs were prepared by various authors on different portions of the Standards and these were widely distributed. The reports of the Special Committee also summarized the progress that was being made in the various

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42. *Proceedings of the House of Delegates*, 65 A.B.A. REP. 89, 102 (1940).

43. *Report of the Special Committee on Improving the Administration of Justice*, 66 A.B.A. REP. 289, 289-90 (1941).

44. The Junior Bar Conference was organized by the Association in 1934 for members under the age of 36. Local representatives were appointed in each state. For an account of the organization of the Conference and its activities, see *Report of the Junior Bar Conference*, 62 A.B.A. REP. 961 (1937).

45. This information was later to serve as information for the book to be published by Vanderbilt. See *infra* note 52.

46. See *Report of the Special Committee on Improving the Administration of Justice*, 66 A.B.A. REP. 289, 290-91 (1941).

states.<sup>47</sup> The Association decided that these activities of the Section should continue and not be suspended during World War II.<sup>48</sup>

Following the end of the war in 1946, the Special Committee began promoting state-wide state judicial conferences in conjunction with state and local bar organizations and others.<sup>49</sup> Its 1947 report observed: "One of the outstanding local achievements of the year was the enactment by the Minnesota legislature of a statute to empower the State Supreme Court to prescribe rules of procedure for the courts of Minnesota in all civil cases."<sup>50</sup>

In 1948, the Special Committee on Improving the Administration of Justice was discharged and its duties assumed by the Section of Judicial Administration.<sup>51</sup> At its 1950 meeting, the Association adopted an unusual recommendation of the Sec-

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47. These developments did not change the status of the Committee on Jurisprudence and Law Reform. It continued its activities in the area of the federal judicial system. The issues considered by it were of a limited and specific character not coming within the sphere of judicial administration as defined at the beginning of this paper.

For example, in its 1939 report (64 A.B.A. REP. 209) its recommendations would create a public defender for federal criminal cases; permit suits against the government for torts committed by its employees; require defendants to give notice of an alibi defense; permit judges to comment on the evidence in criminal cases; forbid judges from engaging in any business; and others of a similar character. *Report of the Standing Committee on Jurisprudence and Law Reform*, 64 A.B.A. REP. 209, 209-21 (1939). The work of this committee will not be considered further.

For an account of the developments in the federal judicial system, see P. FISH, *THE POLITICS OF FEDERAL JUDICIAL ADMINISTRATION* (1973).

48. See *Report of the Special Committee on Improving the Administration of Justice*, 67 A.B.A. REP. 260, 269 (1942). "[A]s part of the wartime programs of the Association" regional programs were suspended and left to state bar association meetings. *Report of the Special Committee on Improving the Administration of Justice*, 68 A.B.A. REP. 313 (1943). The committee advocated five improvements. *Report of the Special Committee on Improving the Administration of Justice*, 69 A.B.A. REP. 297, 297 (1944). The committee received House of Delegates approval that "the sixty-seven recommendations for improving the administration of justice adopted at the 1938 annual meeting be review by the committee and all monographs based thereon be revised and brought up to date." *Proceedings of the House of Delegates*, 70 A.B.A. REP. 101, 127 (1945).

49. *Report of the Special Committee on Improving the Administration of Justice*, 71 A.B.A. REP. 227, 227 (1946).

50. *Report of the Special Committee on Improving the Administration of Justice*, 72 A.B.A. REP. 248, 251-52 (1947) (emphasis omitted). For a discussion of the exercise of this power by the Minnesota Supreme Court, see Pirsig & Tietjen, *Court Procedure and the Separation of Powers in Minnesota*, 15 WM. MITCHELL L. REV. 142 (1989), in which the authors assert that the Minnesota Supreme Court has this power under the state constitution and the power is not dependent on statutory authorization.

51. *Proceedings of the House of Delegates*, 73 A.B.A. REP. 94, 104 (1948).

tion, evidently made for the purpose of again securing approval of the 1938 Standards and expanding their adoption. The recommendation began by reciting the previous commitment of the Association to the Standards, the role played by Judge Parker, the consolidation of the Section and Special Committee just noted, the handbook prepared by the Section on the administration of justice, which included the 1938 Standards, and continued advocacy of the Standards by the state committees. The recital continued:

Chief Justice Arthur T. Vanderbilt has, with the aid and assistance of the Junior Bar Conference, and under the auspices of the National Conference of Judicial Councils, compiled, edited and published "*Minimum Standards of Judicial Administration*," based on a survey and study of the most efficient methods of practice and procedure now employed in the various states.<sup>52</sup>

The recital concluded with the assertion that the Association had previously adopted the Standards "as a charter for the administration of justice in the courts of the United States."<sup>53</sup>

The resolutions which followed were impressive. The Association re-adopted the 1938 Standards "as a pattern for the improvement of the administration of justice in all the courts of the land, and pledges its support by every appropriate means . . . ."<sup>54</sup> "[T]he Association memorializes the organized bar of each state to reexamine its judicial structure in the light of these standards . . . ."<sup>55</sup> The resolutions further directed the Section to cooperate with the organized bar and with named organizations and "all other like-minded organizations, in the promotion and encouragement of institutes, clinics, demonstrations and other appropriate activities, purposed to stimulate interest in, and establish minimum standards for the administration of justice in the courts of the land."<sup>56</sup> In addition, the Association Committee on Coordination was "to exert its best efforts towards the coordination of all bar activities

52. *Proceedings of the House of Delegates*, 75 A.B.A. REP. 102, 142 (1950). This refers to Vanderbilt's book, which was published in 1949. In the Introduction to the book, Justice Vanderbilt gives an account of how the materials were collected, verified, organized and edited in the preparation of the book. See A. VANDERBILT, *MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION* xxvi (1949).

53. *Proceedings of the House of Delegates*, 75 A.B.A. REP. 102, 142 (1950).

54. *Id.* at 142.

55. *Id.* at 142-43.

56. *Id.* at 143.

in one concerted movement in the cause of liberty under law through the improvement of the process of the administration of justice."<sup>57</sup>

This rousing and ambitious proposal evidently received little later support, for, insofar as the Association reports indicate, no steps were taken to implement it. The Section did nothing further and remained inactive until 1958. In that year, the Association authorized the Section to study the constitutions of the states with a view to drafting a model judiciary article for inclusion in state constitutions. In 1961, the Section presented and received adoption by the Association of its Model Judiciary Article. The Article included in its provisions several of the 1938 Standards such as the unified court concept, the power of courts to promulgate rules of procedure, and the creation of state court administrators. It also included provisions relating to the selection, tenure, compensation and retirement of judges, taken from the recommendations of the ABA Section on those subjects.<sup>58</sup> Judging from its absence in subsequent Association reports, the Model Judiciary Article received little further attention.

The absence of response to the fervent pleas for a crusade on behalf of the 1938 Standards, and the indifference to the Model Judiciary Article, suggest that the Standards, the product of an earlier generation, had lost their glamour. The Section of Judicial Administration, as well as the Association, were turning their interest in new directions.

The House of Delegates of the Association, on recommendation of the Section, created the National College of State Trial Judges as a medium for short educational and training courses for judges.<sup>59</sup> The succeeding years proved this to have been a highly successful and important measure.

"Conferences" within the Section began to be organized. These were not conferences in the usual sense, but organizations within the Section consisting of members interested in particular fields. They had their own officers and by-laws and, with some exceptions, had the right to send delegates as their representatives to the House of Delegates of the Association.

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57. *Id.*

58. See *Report of the Section of Judicial Administration*, 86 A.B.A. REP. 751, 752-58 (1961); *Report of the Section of Judicial Administration*, 87 A.B.A. REP. 894, 895 (1962).

59. See *Report of the Board of Governors*, 88 A.B.A. REP. 463, 466-67 (1963).

The National Conference of State Trial Judges was created in 1962;<sup>60</sup> the National Appellate Court Judges Conference in 1964, and the National Conference of Special Court Judges in 1968.

Beginning in 1965, the Section, which up to that time had confined its attention to the problems of state courts, began considering those of the federal courts, a subject which theretofore had been left to the Committee on Jurisprudence and Law Reform. For example, the Section received Association approval to examine the problems of the federal courts of appeal.<sup>61</sup> This was followed by a succession of similar actions.<sup>62</sup>

In light of these developments, the continuance of the Committee on Jurisprudence and Law Reform could no longer be justified. It was abolished in 1970.<sup>63</sup> The responsibilities of the Section of Judicial Administration now covered both state and federal courts.

#### THE STANDARDS AND GUIDELINES ERA

The most drastic change, for which the year 1970 will be remembered, took place when the president of the Association asserted that the Minimum Standards of 1938 "were rightly hailed for their merit in their own day, but they are outmoded and wholly inadequate to meet conditions confronting the nation's courts today."<sup>64</sup> He announced the appointment of a task force of fifteen members

to survey the entire field of judicial administration in order to determine the extent of existing modern standards, to recommend the scope of an undertaking by the Association

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60. This Conference was first listed under the Section of Judicial Administration in 1962. See 87 A.B.A. REP. 80 (1962). In that year it was already active. See the reference to the Conference in *Report of the Section of Judicial Administration*, 87 A.B.A. REP. at 894, 896, as having grown in scope and size.

61. See *Report of the Board of Governors*, 90 A.B.A. REP. 364, 366-68 (1965).

62. In 1966, the Section urged that federal commissioners be replaced by magistrates. See *Report of the Section of Judicial Administration*, 91 A.B.A. REP. 658, 658-59 (1966). In 1967, it endorsed the United States President's recommendation that a Federal Judicial Center be established. See *Report of the Section of Judicial Administration*, 92 A.B.A. REP. 262, 262-63 (1967). In 1970, it supported "in principle" the federal Judicial Reform Act. *Report of the Section of Judicial Administration*, 95 A.B.A. REP. 396, 396 (1970).

63. *Proceedings of the 1970 Annual Meeting of the House of Delegates*, 95 A.B.A. REP. 536, 541 (1970).

64. *Report of the President on the Program of the Association During the Past Year*, 95 A.B.A. REP. 663, 665 (1970).



to draft and promulgate new standards, to determine the order of priorities and to recommend the form which the massive project should take.<sup>65</sup>

The recommendation of the task force was relatively conservative:

The project would have as objectives the compilation and restatement of those principles of court organization, procedure and management that have earned general assent and withstood the test of broad experience and the conducting of investigations leading to new standards of quality and performance in judicial administration on matters that have not received adequate attention, such as the speed, economy and quality of justice and the proper use of judicial resources.<sup>66</sup>

In preparing the new Standards, the task force followed what had become traditional procedures, typified by those adopted by the committees preparing rules of procedure for adoption by the United States Supreme Court. A reporter was retained to prepare drafts for consideration of the task force. The drafts after tentative approval by the task force were distributed to the bench and bar and others for comments and suggestions. The final draft was then prepared and submitted to the Association for adoption. The format adopted also was typical, the Standard in black letter, followed by explanatory comments.<sup>67</sup>

From 1973 to 1977, the following Standards were prepared by the task force and adopted by the Association: Standards Relating to Court Organization; Standards Relating to Trial Courts; Standards Relating to Juror Use and Management; and Standards Relating to Appellate Procedure. It is not within the purpose of this paper to examine the details of these Standards. It is sufficient to observe that each of the sets of Standards consists of over 100 pages, and contains from thirty to fifty specific black letter sections. They go into greater detail than did the Standards of 1938. By and large, they do not mark new trails of judicial reform. They were what the task force intended them to be when the task force was created, "they have earned general assent and withstood the test of

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65. *Id.*

66. *Id.*

67. The project was financed by Law Enforcement Assistance Administration of the Department of Justice, the Ford Foundation and the American Bar Foundation.

broad experience.”<sup>68</sup>

When the 1938 Standards were adopted by the Association, extensive plans were put into operation to disseminate information about the Standards and promote their adoption by the states.<sup>69</sup> Plans for the promotion of the new Standards were on a substantially more limited scale. In 1974, the Association, on recommendation of the House of Governors, “assigned the responsibility of implementing and securing the adoption of the Standards Relating to Court Organization” to the Judicial Administration Division, the new name for the Section of Judicial Administration.<sup>70</sup>

While the task force was engaged in preparing the new Standards, the Section of Judicial Administration was not standing idle. Its name was changed to Judicial Administration Division, the purposes of which were to expand the eligibility for membership in the Division, to bring into one agency of the Association the activities relating to judicial administration, and to enlarge the staff and resources of the Section.<sup>71</sup> A governing Council of approximately fifteen members was created, of which the chairperson of each of the six current Conferences was an *ex officio* member.<sup>72</sup> This composition of the Council undoubtedly was designed to integrate and harmonize

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68. *Report*, *supra* note 64, at 666.

69. *See supra* notes 42–47 and accompanying text.

70. *Proceedings of the House of Delegates*, 99 A.B.A. REP. 568, 608 (1974). At that time, other Standards had not yet been promulgated by the task force. As other Standards were promulgated, their implementation was also referred to the Judicial Administration Division. *See Report of the Special Committee on Implementation of Standards and Codes*, 101 A.B.A. REP. 878, 878 (1976).

71. *See Informational Report of the Section of Judicial Administration*, 97 A.B.A. REP. 968, 969 (1972). *See also Report No. 4 of the Judicial Administration Division*, 98 A.B.A. REP. 857 (1973):

The new Judicial Administration Division is a membership organization, created by the House of Delegates and the Assembly during the 1972 Annual Meeting, which replaces the old Section of Judicial Administration. The new Division includes five Judicial Conferences: The Appellate Judges' Conference, the National Conference of State Trial Judges, the National Conference of Federal Trial Judges, the National Conference of Special Court Judges and the Conference of Administrative Law Judges.

*Id.* “The chief institutional mechanism that the American Bar Association has provided for judges and lawyers who wish to work towards the improvement of justice through the improvement of the judicial system is the Judicial Administration Division.” *Report of the Judicial Administration Division*, 99 A.B.A. REP. 1084, 1084 (1974).

72. *See the 1974 membership list*. 99 A.B.A. REP. 121A (1974). *See also the 1985 membership list*. 110 A.B.A. REP. 134 (1985).

the Conferences with each other and with the Division, considered as an entity distinct from the Conferences.

The new organization appears to have spawned some problems of its own. In 1975, a committee called the Committee on Oversight and Goals, was created to look into "the internal operating procedures of the Division," the "Division's relationship to other entities of the Association," and its "relationship with organizations outside the Association working to improve the administration of justice."<sup>73</sup>

The Division's 1976 report observed that the report of the committee so created was "very candid and frank in its assessment of the many and varied issues currently facing the Division; it is a critical analysis of current relationships and procedures." The Division believed that "[a]doption of the report and implementation of its recommendations will strengthen our efforts to work for the improvement of the administration of justice."<sup>74</sup>

In 1977, the Division addressed the task that had been assigned to it, the implementation of the Standards. Its 1977 report stated that its Committee on Implementation of the Standards of Judicial Administration "has been carrying out a multi-faceted program to implement the Standards of Court Organization, the Trial Court Standards, and the Appellate Court Standards. . . . Special efforts have been made in 'target' states of Louisiana, Maryland, Nevada and Wisconsin . . . ."<sup>75</sup>

Optimism continued in 1978, "an active and fruitful year. . . . Work continued on implementation of the Association's Standards of Judicial Administration. We are pleased to report that the Standards are beginning to receive widespread interest and

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73. *Report of the Judicial Administration Division*, 101 A.B.A. REP. 1102, 1104 (1976).

74. *Id.* In the following year, the Division reported that:

remarkable success has been achieved in less than one year's time in implementing the committee's recommendations. As a result the Division has become better organized and more effective. With the implementation of the remaining committee recommendations, the Division will be able adequately to carry out its mission and provide the judges of this country an effective mechanism for expressing their views and an effective medium for lawyer input into programs for the improvement of courts and the administrative adjudicatory tribunals.

*Report of the Judicial Administration Division*, 102 A.B.A. REP. 936, 938 (1977).

75. *Report of the Judicial Administration Division*, 102 A.B.A. REP. 936, 938 (1977). No further elaboration was offered of what these "special efforts" consisted.

support.”<sup>76</sup> The basis for this optimism was not stated.

The Division’s 1979 report was marked with equal brevity, stating only that the “Project to Implement the Standards . . . continued to provide substantial assistance to groups and individuals in various states working for reform and overhaul of state court systems.”<sup>77</sup>

The 1980 report of the Division was somewhat more specific. It referred to particular states to which it had given help, but remained vague on the specifics of the assistance given.<sup>78</sup>

The Division’s 1981 report was its last to address the implementation of the Standards. It stated only that “[s]ignificant assistance has been provided by the committee to” named states.<sup>79</sup>

From this summary of the Division’s implementation of the Standards, it is evident that the Division had done little more than give some assistance to a few states, probably at those states’ request. What specific measures were, in whole or in part, the product of that assistance does not appear.

There may be several reasons for the general lack of enthusiasm thus evidenced by the Division in implementing the Standards. First, not having been included in the active drafting of the Standards, it may not have felt the strong sense of commitment to them that authorship ordinarily engenders.

Second, as these Standards were being prepared and promulgated, the Division was in the throes of its own reorganization which may, to some extent, have deflected its attention to implementing the Standards.<sup>80</sup>

Third, there may have been some reservations about

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76. *Informational Report of the Judicial Administration Division*, 103 A.B.A. REP. 938, 938 (1978).

77. *Report of the Judicial Administration Division*, 104 A.B.A. REP. 1135, 1135 (1979).

78. *Report of the Judicial Administration Division*, 105 A.B.A. REP. 949, 949 (1980). “Noteworthy” assistance was given to Florida in reducing mandatory jurisdiction of its Supreme Court; “aid” was given to the Oregon Commission on the Judicial Branch; Nevada was “being helped” in its efforts to create an intermediate court of appeals; “support was provided” to Georgia in drafting a new judiciary article; and “assistance” was given to a Louisiana Planning Committee on the problem of growing case loads to the state’s appellate courts. *Id.*

79. *Report of the Judicial Administration Division*, 106 A.B.A. REP. 450, 450 (1981). The states named were Nevada, Georgia, Florida, Louisiana, and Oregon. The report also stated that it had completed a “50-volume set of profiles comparing how the state courts conform with the Standards.” *Id.*

80. In 1981, the Division’s report stated, “We are deeply involved in streamlining our Conferences for greater effectiveness and more efficiency.” *Id.*

whether the Standards were adequate to meet existing problems. Thus in 1984, the Standards Relating to Trial Courts were amended to add a new set of Standards entitled, "Court Delay Reduction Standards."<sup>81</sup> These new Standards have been widely disseminated and their application promoted. Again in 1985, the Association adopted "Guidelines for the Evaluation of Judicial Performance" which had been drafted by an "ABA-wide Special Committee."<sup>82</sup> This was a sensitive and important subject which had not theretofore been addressed by the Association.<sup>83</sup>

Fourth, and more fundamental, the Division may have sensed that members of the bench and bar were offering little support for, and some might even be opposed to, the Standards. Hence, it did not attempt in any substantial measure to advocate the Standards at the state and local levels. Yet it is at those levels that the Standards would be judged in their effectiveness in improving the administration of justice.<sup>84</sup>

The history of the reception by the legal profession of the Pound 1906 address and the lack of support that the profession evidenced for the 1938 Standards would lend support to the Division's reservations about the support the current Standards would get from that source. Chief Justice Burger evidently shared these doubts. In his 1976 "Annual Report on the State of the Judiciary," given at the Association's meeting, he evidenced a degree of disappointment at the lack of substantial progress being made in improving the administration of justice.<sup>85</sup> During his tenure, Chief Justice Burger gave more thought, insight and commitment to judicial reform than his predecessors had given since Chief Justice William Howard Taft. His reaction to the response he received from the legal profession bears special significance. At the 1976 "State of the

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81. *Report of the Judicial Administration Division*, 109 A.B.A. REP. 881, 881 (1984).

82. *Report of the Special Committee on Evaluation of Judicial Performance*, 110 A.B.A. REP. 856, 856-57 (1985).

83. *Id.* at 857. The committee's report stated that the Guidelines did not conflict with existing Association policies. *Id.*

84. When the Division recommended the creation of the Lawyers Conference, it stated, "It is believed that formation of the Lawyers Conference will increase active participation of lawyers so that the Judicial Administration Division can more effectively approach achievement of its goals." *Report No. 4 of the Judicial Administration Division*, 100 A.B.A. REP. 1142, 1142 (1975).

85. Burger, *Annual Report of the State of the Judiciary*, 62 A.B.A. J. 443, 444-45 (1976).

Judiciary" address, he referred to a planned conference "to consider what we must do to be ready for the year 2000 and the need to take a hard look at how we lawyers and judges fulfill our historic function as the 'healers' and 'lubricators' and 'resolvers' of the conflicts of society—to ask whether there are other, simpler, speedier, and less costly ways to reach the desired objectives."<sup>86</sup> He referred to "the perceptive diagnosis made by Dean Roscoe Pound in the form of his speech to the Association in St. Paul in the summer of 1906."<sup>87</sup> He then observed:

I venture to say that if Pound were speaking to us in 1976 he would find a much more responsive audience. Neither the Association nor the profession as a whole has been idle or complacent, especially in recent decades. But on the whole, I think it is fair to say that *judges, lawyers, and legal scholars have devoted more time to tightening "nuts and bolts" here and there than to think about fundamentals*. We must remember that one of Pound's complaints was directed at our lack of a basic legal philosophy, which he said, "gives us petty tinkering where comprehensive reform is needed." Pound used the term "reform" in the sense of reshaping. Our tinkering has been useful, and if it had not been done our system today would be something like a 1906 automobile that had not been overhauled for seventy years. How many would want to drive even a well-maintained 1906 Packard on today's interstate highways?<sup>88</sup>

It would be natural for those who perceived this negativism of the profession to ask its origin and what measures might be taken to produce a more objective perspective. Since, in the last fifty years, nearly all lawyers received their initial training in law schools, it is not surprising that the Association turned to the law schools and asked that courses in judicial administration be included in their curricula.

In 1947, the Association's Special Committee on Improving the Administration of Justice reported:

The committee has also attempted to develop in the law

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86. *Id.* at 445.

87. *Id.* at 446. Chief Justice Burger also noted that at his request the speech had been reproduced in the *American Bar Association Journal* (57 A.B.A. J. 348 (1971)), "to make it more readily available to members of the bar, to remind all of us that the present dissatisfaction is not a new phenomenon, and to provoke some new thinking as Pound tried to do when he spoke to this Association." *Id.*

88. *Id.* (emphasis added).

schools of the country, through the Association of American Law Schools, and members of the faculties of individual schools, the establishment as part of the law school curriculum of a course in Judicial Administration. It is the view of the committee that an awakening of interest in and understanding of the machinery of justice will equip the young lawyer at the beginning of his professional life with an awareness, which most members of the bar lack, of the problems of court administration, so that they will be able in their early years to participate actively in the energetic steps needed to correct its weaknesses.<sup>89</sup>

In 1973, the Judicial Administration Division took more positive steps in dealing with the law schools. It created a Committee on Education in Judicial Administration "to conduct a visitation survey of selected law schools to determine the extent of and methods used in the teaching of Judicial Administration at the present time."<sup>90</sup> The Committee's 1974 report noted that the term "judicial administration" should include a broad range of topics encompassing "all aspects of the administration of justice and delivery of justice to those who seek resolution of their disputes in the courts."<sup>91</sup> The report concluded with a significant observation:

There appeared to be agreement [within the committee] that the purpose in teaching judicial administration was not to promote vocational interest in judicial administration areas, but rather to sensitize the students to evoke a responsible awareness of the problems and to produce a true community of lawyers who are concerned with and oriented to court reorganization and reform.<sup>92</sup>

The Committee was still confident in 1976 when it stated that a joint committee on "Education in Judicial Administra-

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89. *Report of the Special Committee on Improving the Administration of Justice*, 72 A.B.A. REP. 248 (1947).

[EDITOR'S NOTE: The Special Committee also explained: "The recent publication of an excellent book of cases and materials for such a course, by Maynard E. Pirsig of the University of Minnesota, has given stimulus to this effort . . ." *Id.* at 249. For a discussion of Pirsig's book, see *infra* notes 99-100 and accompanying text.]

The reports of the Association from 1962 to 1966 list a Committee on Materials for Teaching Judicial Administration, but no report from that committee has been found.

90. *Report of the Judicial Administration Division*, 99 A.B.A. REP. 486, 490 (1974).

91. *Report of the Judicial Administration Division*, 99 A.B.A. REP. 1084, 1089 (1974). For an account of the committee's study in preparing the report, see *id.* at 1085.

92. *Id.* at 1090.

tion” was being formed with the Association of American Law Schools.<sup>93</sup> However, judging from the absence of any reference to such a committee in subsequent Association reports, the joint committee never materialized.

The last and final report of the Committee, made in 1977, stated it had sponsored “a unique ‘Judge-Law Professor Interaction Seminar on Judicial Administration,’ held at the National College . . . .”<sup>94</sup> The Committee believed it had “made a good start toward getting law school facilities interested in the practical problems of the courts, a task well worth continued attention.”<sup>95</sup>

There were no further reports from the Committee and no new efforts by the Division to secure the teaching of judicial administration in law schools. If lawyers were to be sensitized to the needs and problems of the judicial system, it was not to be through the law schools.

#### LAW SCHOOL COURSES

Published materials for law school courses in judicial administration have not been entirely wanting. Four courses so labeled may be noted.<sup>96</sup> Sunderland’s *Judicial Administration, Its Scope and Methods*,<sup>97</sup> published in 1937, is the first book with that title and aimed specifically for use in law schools. Professor Sunderland of Michigan Law School was a preeminent scholar of his time in the field of civil procedure. According to his Preface, his objective was to provide a better understanding of rules of procedure. “They should be studied in their concrete setting, and that setting consists of the court itself as an operating agency of government, with all its constituent elements, together with the functions it is expected to perform and the restrictions and limitations placed by law upon its power to act.”<sup>98</sup>

93. *Report of the Judicial Administration Division*, 101 A.B.A. REP. 1102, 1106 (1976), stating, “All seem to be in agreement that this is a good idea.” *Id.*

94. *Report of the Judicial Administration Division*, 102 A.B.A. REP. 936, 938 (1977).

95. *Id.*

96. The 1988–89 THE AALS DIRECTORY OF LAW TEACHERS lists some 15 courses under the heading “Judicial Administration.” The writer’s earlier questionnaire to authors of the courses so listed indicated that the courses and the materials used had little in common. The ambiguity of the term probably accounts for this diversity. See *supra* notes 1–2 and accompanying text.

97. E. SUNDERLAND, CASES AND MATERIALS ON JUDICIAL ADMINISTRATION (1937).

98. *Id.* at iii.



To implement this objective, the author's materials include legal rules that govern such questions as the meaning of "court," the law relating to attorneys, the legal qualifications for judges, and others. The bulk of the materials, however, consisting principally of opinions of appellate courts, deals with specific procedural problems typical of those one would find in casebooks on civil procedure. One hundred-fifty pages are devoted to common law writs in civil actions, 200 pages on federal jurisdiction, and 400 on pleading.

The quality of the book is impressive but it is not one on judicial administration as defined at the beginning of this paper. Its principal aim was rather to inform students of the legal principles governing civil procedure that they may use later as practicing attorneys.

The writer's *Cases and Materials on Judicial Administration*<sup>99</sup> was published in 1946. It undertook to include materials consistent with the writer's above definition of judicial administration. The materials began with an examination of the meaning of justice. They then dealt with an analysis of how justice is implemented through the rule of law, including the doctrine of precedent, its methods and merits. The adversary system, which permeates so much of Anglo-American judicial system, was examined. The earlier portion of the materials dealt also with the problem of reconstructing past events through testimony of witnesses with fading memories, difficulties of communication, etc.

These basic considerations were then applied in subsequent chapters dealing with such topics as jury trial, court organization, trial techniques, the role of the legal profession, and others.

Included, for comparison purposes, were the adjudicatory methods employed by administrative agencies and some aspects of the English judicial system, such as their treatment of precedent and their court organization.

The course was part of the curriculum of the University of Minnesota Law School for some twenty years and a few other law schools experimented with the book. The course was discontinued at the University of Minnesota Law School upon the retirement of the writer. A reviewer's observation about the

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99. M. PIRSIC, *CASES AND MATERIALS ON JUDICIAL ADMINISTRATION* (1946).

book may suggest the reason for its limited use. After reviewing it in favorable terms, he concluded, "Just how to use this book is not too obvious."<sup>100</sup> A teacher's manual should have been prepared.

Vanderbilt's *Cases and Other Materials on Modern Procedure and Judicial Administration*<sup>101</sup> was published in 1952. Like Sunderland's book, it was essentially a casebook on procedure, but it had its own distinctive features. It included criminal as well as civil procedure. The Federal Rules of Civil Procedure and those on criminal procedure were set out as models to be followed. There was considerable use of excerpts from writers on the various subjects. Quotations from the 1938 Minimum Standards of judicial administration were extensive. Pound's 1906 address to the American Bar Association was set out in full at the beginning of the book. The final chapter, entitled "Judicial Administration," consisted of text written by the author and covered the principle topics of the subject. The author evidently assumed that students and instructors would relate these two items to the specific procedures elsewhere presented in the book.

The latest book intended for law school use is Nelson, *Judicial Administration and the Administration of Justice*,<sup>102</sup> published in 1974. About 500 of the approximately 1000 pages deal with criminal procedure and some specialized courts. The balance addresses topics recognized as falling within the term, judicial administration. The book is unique in that nearly all of the materials consisted of excerpts from the writings of others. The selections are of superior quality. The accompanying notes of the editor are informative and raise provocative questions. For persons already knowledgeable about judicial administration, this was an excellent collection of materials selected from those available at the time of its publication. As a book for use in law school courses on the subject, it was open to question. Instead of providing concrete situations which

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100. Gardner, Book Review, 60 HARV. L. REV. 680, 681 (1947) (reviewing M. PIRSIG, *CASES AND MATERIALS ON JUDICIAL ADMINISTRATION* (1946)).

[EDITOR'S NOTE: The concluding comment of the reviewer was: "Just how to use this book is not too obvious. *But it is obviously too good not to be used.*" *Id.*]

101. A. VANDERBILT, *CASES AND OTHER MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION* (1952).

102. D. NELSON, *CASES AND MATERIALS ON JUDICIAL ADMINISTRATION AND THE ADMINISTRATION OF JUSTICE* (1974).

challenge students to recognize the problems involved and to seek solutions, they received someone else's statement of the problems and their solutions. It has been said, "The discussion of real problems is always fruitful. The discussion of other men's discussions of real problems tends to evaporate into this air."<sup>103</sup>

Some important topics were not included, such as the doctrine of precedent, bar organization, the adversary system, and the reconstruction of factual events of the past. Comparisons with the English judicial system and with administrative agencies were not offered. Neither does the book bring before the student a general overview of the "whys" and "wherefores" of the judicial system. Reasons such as these may account for the evident limited use of the book received from law schools. Its publication has been discontinued.

With these wide differences in what should be included in a course on judicial administration, it is not surprising that law schools should hesitate in introducing such courses.

#### THE WILLIAM MITCHELL COLLEGE OF LAW PROGRAM

The William Mitchell College of Law recently adopted a course entitled, "Comparative Judicial Administration." Mimeographed materials for the course have been prepared which follow the basic approach of the writer's former course in judicial administration described above. A few new topics have been added and the items selected for inclusion are almost entirely of recent origin. Greater emphasis has been placed on comparison of the American judicial system with the adjudicatory proceedings of administrative agencies and with the English judicial system. When given as part of a summer session program, the second half of the course has been conducted in England with Professor Michael Zander participating as co-instructor.<sup>104</sup>

With the coming establishment of the European economic community, and the need of American lawyers to deal with it, materials are being added that examine the basics of the judicial systems of European countries. A course in judicial ad-

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103. Gardner, *supra* note 100, at 680.

104. Professor Zander, professor and head of the law department of the London School of Economics, is the leading authority in England on judicial administration.

ministration, with its comparative aspects, would appear to be the appropriate course in which to consider this subject.

The recent Warren E. Burger addition to the school's building with its increase in library space will permit the enhancement of the school's program on judicial administration. A separate room has been set aside that will focus on materials on the subject and be known as the judicial administration room.<sup>105</sup>

With research materials available and a core of instructors qualified to teach the subject, the present and long term prospects for the school's program appear promising. Graduates of the school who have taken the course in judicial administration, or engaged in substantial research in the field, should have a better insight into the judicial system, its need and prospects for improvement, and the role that they as members of the profession can and should play.<sup>106</sup> This is consistent with the school's general objective of developing, not only superior practitioners, but practitioners with a sense of professionalism, a sense of service to the social order.

There is also the prospect that the program may be utilized, as an independent source, for research and studies addressed specifically to aspects of the judicial systems of Minnesota and surrounding states.

### SUMMARY AND CONCLUSION

This essay should not close without giving recognition to the important role the American Bar Association and its Division and its predecessors have played for over a century in providing a forum and being an advocate for advancing the improvement of the administration of justice. The principle is now accepted that judicial procedure is best provided by court promulgated rules. The management of the judicial business of courts by the highest court, assisted by court administrators and statistical information on the work of the courts, has be-

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105. Materials on professional responsibility are included. The legal profession, its services and its standards are an integral part of judicial administration as defined in this paper. See *supra* notes 1-2 and accompanying text.

To serve its purposes, the program will need to engage in research and study, not only of developments in judicial administration that have taken place in the past, but also of the new developments and events that continually take place.

106. Compare the observations of the American Bar Association. *Supra* note 92 and accompanying text.

come widespread. Judges now accept the fact that the performance of their judicial duties can be improved by educational and training programs. Standards and guidelines have been developed which, when followed, improve many aspects of the administration of justice. For these and other improvements in judicial administration the Association can claim much credit.

With the recognition, however, must go the acknowledgment that the present judicial system still is plagued with serious problems. Long delays in the disposition of litigation continue to persist, particularly in metropolitan areas. The cost of litigation has become so high as to place it beyond the reach of the poorer citizen's modest claims, a situation that William Howard Taft deplored in his time at the beginning of the century.<sup>107</sup> Lawyers still dominate the courtroom scene as they proceed at their own pace, and sometimes incompetently, through the trial of cases. It may be, as Chief Justice Burger at one time intimated, that the improvements that have been made really deal only with the "nuts and bolts" of the system.<sup>108</sup> More drastic measures may be in order.

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107. See *supra* note 27 and accompanying text. See also Marcotte, *Unequal Justice*, A.B.A. J., Sept. 1989 at 44, 44, summarizing an April 1989 Harris Poll of about 1000 lawyers and judges contacted by telephone:

Both judges and lawyers cited costs, delays and discovery abuses as their most serious criticisms of the civil justice system.

A majority of the judges and lawyers agreed that high costs of litigation impede its use by the ordinary citizen, and that these costs give an unfair advantage to "large interests" with greater legal resources.

108. See *supra* note 88 and accompanying text.